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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 VINCENT GAMBOA,

15 Defendant.

CASE NO. CR93-2090RJB

ORDER DENYING MOTION
PURSUANT TO 3282 (C)(2) AND
AMENDMENT 750 REQUESTING
SENTENCE REDUCTION

16 This matter comes before the court on the above-referenced motion (Dkt. 198). The court
17 has considered the documents filed in support of and in opposition to the motion, and the records
18 and files herein, including the Presentence Report, which is attached hereto as a sealed exhibit
19 for ease of reference, and the transcript of the sentencing proceedings (Dkt. 63 at page 61 *et*
20 *seq.*). This motion addresses a legal issue and does not invoke the discretion of the court.
21 Unfortunately, for Mr. Gamboa - and arguably for the cause of justice - the court cannot order a
22 resentencing or sentence reduction. The reasons for that conclusion are well set out in the
23 Government's Response to Defendant's Motion for Sentence Reduction (Dkt. 210), which
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1 includes citations to consistent case law that is not repeated herein. The following is a brief
2 explanation of the reasons for the court's conclusions.

3 An appropriate beginning place in this analysis is the Presentence Report, which in all
4 pertinent parts was adopted by the sentencing judge, The Honorable Jack E. Tanner. Sentencing
5 considered, in part, the then-existent sentencing guidelines, which resulted in an offense level of
6 36, based upon the offenses involving 96.6 grams of cocaine base. The career criminal
7 provisions of the United States Sentencing Guidelines § 4B1.1 raised that offense level to 37,
8 based on the offenses statutory maximum of life in prison. Also, because of the career criminal
9 guideline, the defendant's criminal history category was VI. The resulting USSG sentencing
10 range was 36 months to life. Judge Tanner sentenced the defendant to the low end of the range.

11 Long after Mr. Gamboa's sentencing, 18 U.S.C. § 3582(c)(2) was passed. That statute
12 allowed "resentencing . . . in the case of a defendant who has been sentenced to a term of
13 imprisonment based upon a sentencing range that has subsequently been lowered by the
14 sentencing commission." The crack cocaine guidelines were lowered pursuant to USSG
15 Amendment 750.

16 Applying the reduced sentencing guidelines to Mr. Gamboa's offense, we find that the
17 base offense level becomes 26, with 2 points added for possession of a dangerous weapon and 2
18 points added for his role in the offense, leaving a net guideline offense level of 30. If the
19 analysis ended there, Mr. Gamboa would be entitled to a resentencing. However, because of his
20 career criminal status under USSG § 4B1.1, the offense level remains at 37 because the
21 maximum statutory sentences for the offenses of conviction was life in prison. In spite of the
22 lowering of the Guideline Sentencing range for crack cocaine offenses, the career offender
23 sentencing guideline has not been reduced, and the net offense level of 37 and the criminal
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1 history category of VI still apply to Mr. Gamboa, leaving him with the same sentencing range of
2 360 months to life. Judge Tanner's sentence of Mr. Gamboa to 360 months remains the low end
3 of the guidelines range. Mr. Gamboa's term of imprisonment was not based upon a sentencing
4 range that has been lowered by the sentencing commission; it was based upon his career offender
5 status and the statutory maximum sentences for his offenses of conviction.

6 While the maximum penalties for Mr. Gamboa's sentences of conviction have been
7 reduced by the Fair Sentencing Act, that statute does not apply retroactively to persons sentenced
8 before its effective date.

9 Under these circumstances, the court is without authority to grant Mr. Gamboa's motion
10 and the motion (Dkt. 198) is hereby DENIED.

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
12 to any party appearing *pro se* at said party's last known address.

13 Dated this 27th day of December, 2011.

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16 ROBERT J. BRYAN
17 United States District Judge
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